Supreme Court, U.S.
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No. 86-570

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

COUNTY OF FRESNO, FRESNO COUNTY BOARD OF SUPERVISORS, ALLAN COLMAN, JAMES EDMUNDS, DONALD ROWE and DONN COBB,
Petitioners,

VS.

SUPERIOR COURT OF THE COUNTY OF FRESNO,
Respondent,
ANGELA SHARON MOTSENBOCKER,
Real Party in Interest.

On Petition for a Writ of Certiorari to the Supreme Court of California

Brief of Real Party in Interest In Opposition to Petition for Writ of Certiorari

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35pp

QUESTIONS PRESENTED

Did the state appellate court correctly rule that, under the standards set forth in Chevron Oil Company v. Huson (1971) 404 U.S. 97, the United States Supreme Court decision in Wilson v. Garcia (1985) 105 S. Ct. 1938, 85 L. Ed. 2d 254, mandating that the statute of limitations for personal injury actions in each state be the applicable statute of limitations for all Section 1983 Civil Rights claims nationwide, should be applied prospectively in California?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES . . . . . iii-v

OPINIONS BELOW & JURISDICTION 1

STATUTES INVOLVED 1

REAL PARTY IN INTEREST'S STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 6

I. ANY CONFLICT EXISTING REGARDING WHETHER THE UNITED STATES SUPREME COURT DECISION OF WILSON V. GARCIA SHOULD HAVE RETROACTIVE EFFECT DOES NOT INVOLVE IMPORTANT QUESTIONS OF FEDERAL LAW 6

II. UNDER THE PRINCIPLES SET FORTH IN CHEVRON OIL CO. V. HUSON, THE SUPREME COURT'S DECISION IN WILSON V. GARCIA SHOULD NOT BE APPLIED RETROACTIVELY TO BAR REAL PARTY IN INTEREST'S CLAIM 14

CONCLUSION 23

APPENDIX 42 U.S.C. SECTIONS 1983 and 1988

TABLE OF AUTHORITIES

	PAGE
Abbitt v. Franklin (10th Cir. 1984) 731 F.2d 661	15
Barina v. Gulf Trading & Transp. Co. (9th Cir. 1984) 726 F.2d 560	12
Chevron Oil Company v. Huson (1971) 404 U.S. 97	7, 12, 13, 14, 16, 17, 19, 22, 23, 24
DelCostello v. International Brotherhood of Teamsters (1983) 462 U.S. 151, 103, S. Ct. 2281	22
Donovan v. Reinbold (9th Cir. 1970) 433 F.2d 738	10, 15,20
Fernandez v. Chardon (1st Cir. 1982) 681 F.2d 42 aff. on other grds 103 S. Ct. 261 (1983)	13
Fitzgerald v. Larson (3rd Cir. 1985) 769 F.2d 160	15, 16, 19
Gates v. Spinks (5th Cir. 1985) 771 F.2d 916	11, 16
Gibson v. United States (9th Cir. 1986) 781 F.2d 1334	10, 21

Glover v. United Groceries, Inc. (9th Cir. 1984) 746 F.2d 1380 cert den. 105 S. Ct. 2357 22

Jackson v. City of Bloomfield (10th Cir. 1984) 731 F.2d 652 11, 13, 15

Jones v. Preuitt & Mauldin (11th Cir. 1985) 763 F.2d 1250 11, 16, 17

Mulligan v. Hazard (6th Cir. 1985) 777 F.2d 340 cert den. 106 S. Ct. 2902 10, 16

Parker v. Superior Court (1985) 175 Cal. App. 3d 1082 15, 21

Mills v. Small (9th Cir. 1971) 446 F.2d 249 10

Occhino v. United States (8th Cir. 1982) 686 F.2d 1302 13

Rivera v. Green (1985) 775 F.2d 1384 10, 21

Rossiter v. Benoit (1979) 88 Cal. App. 3d 706, 152 Cal. Rptr. 65 10, 15, 20

Singer v. Flying Tiger Line Inc. (9th Cir. 1981) 652 F.2d 1349 13

Smith v. Cremins (9th Cir. 1962) 308 F.2d 187 10

Smith v. City of Pittsburg (3rd Cir. 1985) 764 F.2d 188 11, 15, 16

Wilson v. Garcia (1985) 105 S. Ct. 1938, 85 L. Ed. 2d 254 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 23, 24

Wycoff v. Menkee (8th Cir. 1985) 773 F.2d 983 10, 16

STATUTES & RULES

42 U.S.C. Section 1983 1, 2, 7, 8

42 U.S.C. Section 1988 1

29 U.S.C. Section 151 et seq.

Real Party in Interest ANGELA SHARON MOTSENBOCKER respectfully submits her opposition to the pending Petition for Writ of Certiorari in the above captioned action.

OPINIONS BELOW AND JURISDICTION

Real Party in Interest ANGELA SHARON MOTSENBOCKER agrees with Petitioners' reference to the Opinions below, and to their jurisdictional statement.

STATUTES INVOLVED

In addition to the statutes referenced in the Petition, this matter involved 42 U.S.C. Section 1983 and 1988 as set forth in Appendix A, attached hereto.

REAL PARTY IN INTEREST'S STATEMENT OF THE CASE

On April 23, 1985, Real Party in Interest, ANGELA SHARON MOTSENBOCKER (Motsenbocker), filed her State Court Com-

plaint alleging two causes of action. Both causes of action seek relief under 42 U.S.C. Section 1983 for conduct alleged to have occurred between July 1, 1982 and August 9, 1983. The first cause of action alleges that petitioners conspired and did wrongfully terminate Motsenbocker from her employment with petitioner Fresno County. The second cause of action alleges that petitioners Colman, Rowe, Cobb and Edmunds engaged in an outrageous and concerted course of conduct intended to force Motsenbocker to leave her employment with petitioner Fresno County, and to harass, humiliate, and intimidate Motsenbocker.

Petitioners filed and served on Motsenbocker a demurrer to the complaint on July 27, 1985. The demurrer challenged the timeliness of the complaint, alleging that

the complaint was barred by the personal injury statute of limitations period application to Section 1983 actions (one year in California), announced by the Supreme Court in Wilson v. Garcia (1985) __ U.S. __, 105 S. Ct. 1938, 85 L. Ed. 2d 254, decided several days before the complaint was filed. Opposition to the demurrer was filed and served on August 9, 1985. Petitioners' reply was filed and served on September 20, 1985 and a hearing on the demurrer was held on September 24, 1985 before The Honorable Dwayne Keyes. Judge Keyes overruled the demurrer on that date and his written order was filed on October 14, 1985.

On November 20, 1985, Petitioners filed a timely Petition for Writ of Mandamus, Prohibition or other appropriate writ and supporting papers with the California State

Court of Appeal for the Fifth Appellate District. Petitioners prayed for issuance of an Alternative writ of Mandamus, Prohibition, and/or other appropriate writ commanding Respondent State of California Superior Court, County of Fresno to vacate its order overruling the demurrer and to enter an order granting the demurrer dismissing the complaint as untimely, or in the alternative, to show cause why it had not done so and why a peremptory writ should not issue, and for other further relief.

On December 9, 1985, Motsenbocker served its opposition to the Petition for Writ. On December 9, 1985, the Court of Appeal issued an order to show cause which was filed on December 12, 1985. Petitioners' reply was filed and served on January 9, 1986. Oral arguments were heard on March 17, 1986.

The Court of Appeal filed its written opinion denying Petitioners' Writ and ordered that Motsenbocker recover her costs incurred in the proceedings on the writ from petitioners on April 4, 1986. The Court of Appeal held that "the one-year limitation period applicable under Wilson v. Garcia, supra, should be applied prospectively only so as not to bar Real Party's claims that were timely under the law in effect when they arose."

Petitioner sought review of the Appellate Court's decision on May 13, 1986 by filing a timely petition to the Supreme Court of the State of California to review the judgment and decision of the Fifth Appellate District. Motsenbocker filed her opposition to the Petition on May 22, 1986. Petitioners' Petition for Review was denied

on July 9, 1986 when the Supreme Court of the State of California filed and served its order denying review.

Motsenbocker received petitioners' Writ for Certiorari filed with this Court on October 8, 1986. The instant opposition followed.

REASONS FOR DENYING THE WRIT

I. ANY CONFLICT EXISTING REGARDING WHETHER THE UNITED STATES SUPREME COURT DECISION OF WILSON V. GARCIA SHOULD HAVE RETROACTIVE EFFECT DOES NOT INVOLVE IMPORTANT QUESTIONS OF FEDERAL LAW

Contrary to petitioners' assertion there is no nationwide controversy as to whether the United States Supreme Court decision in Wilson v. Garcia (1985) 105 S. Ct. 1938, 85 L.Ed. 2d 254 should be given a carte blanc retroactive effect. All circuits addressing the issue thus far have uniformly held that the retroactive effect of this

Court's decision in Wilson must be determined by applying the standards set forth by this Court in Chevron Oil Company v. Huson (1971) 404 U.S. 97, 92 S. Ct. 349, 30 L.Ed. 2d 296. The different conclusions reached by the various circuits are not the result of the application of differing legal principles or unanswered questions of federal law. Instead, the various results stem from the status of the law surrounding the applicable statute of limitations period in civil rights actions brought pursuant to 42 U.S.C. Section 1983 within the particular circuit prior to the announcement of the Wilson decision.

Petitioners mischaracterize the intent of the Supreme Court in deciding Wilson with respect to establishing a nationwide uniform statute of limitations period for Section 1983 actions.

The Court did not establish a nationwide statute of limitations period. Instead, the Court sought to insure that in each state there would be but one statute of limitations period for actions brought under Section 1983. Specifically the Court stated that:

> Although the need for national uniformity "has not been held to warrant the displacement of state statutes of limitations for civil rights actions" (citation omitted), uniformity within each state is entirely consistent with the borrowing principle contained in Section 1988. We conclude that the statute is fairly construed as a directive to select, in each state, the one most appropriate statute of limitations for all Section 1983 claims. The federal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach. (Emphasis added.)

Wilson v. Garcia, supra, 105 S. Ct. at 1947. Thus, the Supreme Court, in order to insure that but one limitations period be identified

in each state as applicable to Section 1983 claims, undertook the task of characterizing the nature of a Section 1983 claim. After reasoned consideration of many possible characterizations, the Court held that all Section 1983 claims brought nationwide are to be characterized as personal injury actions for the purpose of determining which state statute of limitations period is to apply. Wilson v. Garcia, supra, 105 S. Ct. at 1947. The Wilson decision overruled the existing law in California and in the Ninth Circuit, not because Wilson established that only one state limitations period was applicable to Section 1983 actions, but because Wilson characterized the nature of Section 1983 actions as personal injury actions, whereas both California and the Ninth Circuit had previously held that the nature of Section 1983

actions was that of actions brought upon a liability created by statute. Smith v. Cremins (9th Cir. 1962) 308 F.2d 187; Donovan v. Reinbold (9th Cir. 1970) 433 F.2d 738; Mills v. Small (9th Cir. 1971) 446 F.2d 249; Rossiter v. Benoit (1979) 88 Cal. App. 3d 706, 152 Cal. Rptr. 65.

Under the current law established by Wilson, the actual period of limitations varies from state to state. In California, and in Ohio, a plaintiff must file suit within one year of the injury. Gibson v. United States (9th Cir. 1986) 781 F.2d 133; Mulligan v. Hazard (6th Cir. 1986) 777 F.2d 340. In Arizona and Iowa, the same plaintiff must file within two years. Rivera v. Green (9th Cir. 1985) 775 F.2d 1381; Wycoff v. Menke (8th Cir. 1985) 773 F.2d 983. In Mississippi, the plaintiff must file within

one year in Alabama, within six years, and, in Pennsylvania, within two years. Gates v. Spinks (5th Cir. 1985) 771 F.2d 916; Smith v. City of Pittsburg (3rd Cir. 1985) 764 F.2d 188; Jones v. Preuitt & Mauldin (11th Cir. 1985) 763 F.2d 1250. In New Mexico, a Section 1983 action must be filed within three years. Jackson v. City of Bloomfield (10th Cir. 1984) 731 F.2d 652. Thus, there is nothing uniform about the limitations period being applied to Section 1983 actions nationwide. Likewise, the effect of the Wilson decision varies from state to state. In some instances, the decision lengthened the limitations period and, in some, it shortened the period. More importantly, in some states it established one limitations period where, before, there had been more than one limitations period applicable to Section 1983

actions. (See authorities cited above). Thus, contrary to petitioners' assertion, whether or not Wilson is applied retroactively or prospectively, there will not be a uniform statute of limitations period nationwide.

This Court has set forth a three-prong analysis to be applied in determining whether or not a newly-formulated rule of law should be applied retroactively to bar an action in Chevron Oil Company v. Huson, supra. The principles set forth in Chevron are as follows: "(1) whether the decision establishes a new principle of law; (2) whether retroactive application will further or retard the purposes of the rule in question; and (3) whether applying the new decision will produce substantial inequitable results." Barina v. Gulf Trading & Transp. Co. (9th

Cir. 1984) 726 F.2d 560, 563 (applying Chevron). Thus, this Court has previously held that to determine whether or not a decision is to be applied retroactively requires a balancing of the above enumerated factors in order to protect against substantially inequitable results and to further the purpose of the rule in question. Petitioners, in their Petition, recognize the validity of the Chevron standards which have been consistently utilized where changes in statutes of limitations are at issue. See: Jackson v. City of Bloomfield, supra; Occhino v. United States (8th Cir. 1982) 686 F.2d 1302; Fernandez v. Chardon (1st Cir. 1982) 681 F.2d 42, aff on other grds 103 S. Ct. 2611; Singer v. Flying Tiger Line, Inc. (9th Cir. 1981) 652 F.2d 1349.

In summary, there is no important ques-

tion of federal law to be answered which would justify the granting of the instant Petition for Writ of Certiorari. Under well accepted principles of federal law, and pronouncement of this Court, the retroactivity of a newly announced rule is to be determined under a Chevron analysis.

II. UNDER THE PRINCIPLES SET FORTH IN CHEVRON OIL CO. V. HUSON, THE SUPREME COURT'S DECISION IN WILSON V. GARCIA SHOULD NOT BE APPLIED RETROACTIVELY TO BAR REAL PARTY IN INTEREST'S CLAIM

The first and most important factor of the Chevron analysis is whether the decision in question establishes a new principle of law. Contrary to petitioners' contention, this first factor is not limited to determining whether or not there exists a clear past precedent of the United States Supreme Court which has been overruled, but instead whether there exists clear precedent "upon which a

plaintiff may rely." Jackson v. City of Bloomfield, supra; Abbitt v. Franklin (10th Cir. 1984) 731 F.2d 661; Smith v. City of Pittsburg, supra; Fitzgerald v. Larson, (3d Cir. 1985) 769 F.2d 160.

There can be no question that prior to the Wilson v. Garcia decision, the law in California was well settled. Unlike the circuits and states which applied one of several statute of limitations period to Section 1983 actions, depending of the nature of the claims underlying the complaint, in California there was but one statute of limitations period applied to all Sections 1983 actions. Parker v. Superior Court, supra; Gibson v. United States, supra; Donovan v. Reinbold, supra; Rossiter v. Benoit, supra. As stated above, this Court's decision in Wilson overruled clear precedent in

California and in the Ninth Circuit characterizing Section 1983 actions as actions based on a liability created by statute. Prior to Wilson, potential litigants in California relied on the long settled rule that Section 1983 actions must be filed within three years. Thus, the first Chevron factor weighs heavily in favor of prospective application.

It is important to note that in all of the cases cited by petitioners as having held Wilson retroactive, there was a finding that there existed no pre-existing precedent upon which the plaintiff could have relied which would have allowed the suit as timely, where Wilson would not. Jones v. Preuitt v. Mauldin (11th Cir. 1985) 763 F.2d 1250; Gates v. Spinks, supra; Wycoff v. Menke, supra; Smith v. City of Pittsburg, supra; Mulligan v. Hazara, supra; Fitzgerald v. Larson,

supra.

The second factor in Chevron also weighs in favor of prospective application. As stated above, the purpose and intent of the newly adopted rule in Wilson is to insure that there is intra-state uniformity and certainty in Section 1983 actions, with each state applying one statute of limitations period. Wilson v. Garcia, supra 105 S. Ct. at 1947; Jones v. Preuitt & Mauldin, supra. Because the Ninth Circuit and California applied only one limitations period prior to Wilson, the purpose of this Court's decision in Wilson is furthered regardless of whether Wilson is applied prospectively or retroactively. There has always been one statute of limitations in California applicable to Section 1983 actions. In other circuits prospective application of Wilson would leave

cases pending in which useless litigation on the collateral matter of the nature of the claim must still be decided. This is not so in the instant case.

It is above described type of multiple collateral litigation that the Wilson decision seeks to eliminate, not Section 1983 actions in and of themselves, as petitioners would have the Court believe. In addition to the need for intra-state uniformity, the Wilson decision recognizes the high purposes of the unique remedy created by the statute and the necessity of giving the statute as broad a sweep as possible in order to insure the widest possible availability of the remedy. Wilson v. Garcia, supra, 105 S. Ct. at 1945.

Thus, for the above stated reasons, the second factor also supports the state

appellate Court's finding that Wilson should be given prospective application in California.

The third factor of the Chevron analysis is intricately tied to the first, which as already stated, weighs heavily in favor of prospective application. The Third Circuit in Fitzgerald v. Larson, supra. stated that it would be inequitable to give retrospective application to a newly established shorter time period that altered prior law upon which a plaintiff could have reasonably relied. However, in Fitzgerald, the court went on to find that there had been no established law in the Third Circuit prior to Wilson v. Garcia, supra. which warranted reliance and, thus, concluded that in the Third Circuit it would not be inequitable to hold Wilson retroactive. Such is not the case, however, in

the Ninth Circuit. Since Wilson overruled clear past precedent holding the statute of limitations to be three years, it would be inequitable to shorten the time period so as to bar Motsenbocker's claim. Motsenbocker reasonably relied on clear California Supreme Court and Ninth Circuit authority, given the absence of the pronouncement on the issue by this Court, in waiting to file her Section 1983 lawsuit. Donovan v. Reinbold, supra; Rossiter v. Benoit, supra. When the Wilson decision was announced, Motsenbocker immediately filed her complaint.

The Ninth Circuit's approach to circumstances such as these, where the effect of a recently promulgated rule of law varies from state of state within the circuit depending on the prior status of the law in that state, is equitable and is intended to

preserve a litigant's access to important remedies. In the Ninth Circuit, when a new rule of law increases the limitations period, as in Rivera v. Green, supra., the rule is given retroactive effect thereby opening doors for plaintiffs who might otherwise be denied their day in court. On the other hand, if the new rule would act to shorten the limitations period, as in the instant case, Gibson v. U.S., supra., and Parker v. Superior Court, supra., the rule is given prospective effect so as not to deny a party his/her day in court when there had been reasonable reliance on established law. Moreover, a defendant cannot be prejudiced by enforcing the limitations rule prevailing at the time of a defendant's alleged wrongful acts. Gibson v. United States, supra. 781 F.2d at 1339. This approach would prevent

the scenario which petitioners suggest in their Petition at page 8, regarding the DeVargas v. New Mexico (1982) 97 NM 563 decision. Under the Ninth Circuit rule, DeVargas would have his day in court.

The approach defined above is not only equitable under the Chevron standards, but has successfully been utilized in the Ninth Circuit when a similar ruling by this Court established a new rule concerning the applicable time period in suits brought under section 301 of the Labor Management Relations Act, 29 U.S.C. Section 151 et seq. DelCostello v. International Brotherhood of Teamsters (1983) 462 U.S. 151, 103 S. Ct. 2281; Glover v. United Groceries, Inc. (9th Cir. 1984) 746 F.2d 1380 cert den. 105 S. Ct. 2357.

CONCLUSION

The questions presented by petitioners do not involve important questions of federal law or require that this Court establish a nationwide rule with regard to the retroactivity of its decision in Wilson v. Garcia, supra. The effect of Wilson varied from state to state and circuit to circuit depending on what the status of the law was in each jurisdiction prior to Wilson. Thus, a nationwide rule concerning retroactivity would be difficult to formulate, and inevitably inequitable. The standard to be used in determining whether a newly announced rule of law should be given retroactive or prospective effect is well settled and set forth in Chevron Oil Company v. Huson, supra. The Ninth Circuit's approach, as adopted by the State Court of Appeals in the instant

case, is well reasoned, in compliance with the Chevron standards, and consistent with the purpose and intent of Wilson.

For all of the reasons stated above, the Petition for a Writ of Certiorari should be denied.

DATED: November 3, 1986

Respectfully submitted,

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APPENDIX A

CODE SECTIONS 42 U.S.C. 1988 and 1983

42 U.S.C. Section 1988

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of [the civil rights statutes]...shall be exercised and enforced in conformity with the laws of the United States...; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the Untied States, shall be extended to and govern the said courts in the trial and disposition of the cause...

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, certify as follows:

I am a citizen of the United States of America, a resident of the County of Fresno, State of California, over the age of eighteen years, and not a party to the within entitled cause or matter. My business address is 2300 Tulare Street, Suite 230, Fresno, California 93721.

On November ____, 1986 I served the foregoing Brief of Real Party in Interest in Opposition to Petition for Writ of Certiorari by depositing true copies thereof in the United States Post Office mail box at Fresno, California, enclosed in sealed envelopes, with postage thereon fully prepaid, addressed

as follows:

Frank D. Maul, Counsel of Record
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2011 Fresno Street, Suite 305
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I certify under penalty of perjury that the foregoing is true and correct.

Executed at Fresno, California, on November ____, 1986.

_____